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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In APPLICATION of

JACOBS et al.

: Confirmation No.: 8644

Serial. No.: 10/076,082

: Group Art Unit: 3634

Filed: February 15, 2002

: Examiner: K. TRAN

FOR: MODULAR STANCHION STORAGE STRUCTURE

October 16, 2003

REPLY TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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In reply to the Election of Species Requirement dated October 2, 2003, Applicants elect with traverse Species II (Figures 5A-5C, 8-11 and 19-23) for further prosecution. Figures 12-18B are generic to all species. It is respectfully submitted that claims 1-8, 14-29 and 32-42 read on the elected Species II and the figures that are generic to both species. Furthermore, claims 1-8, 14-29, 41 and 42 are generic to both Species I and II.

It is also respectfully submitted that the subject matter of Species I and II is sufficiently related that a thorough search and examination for the subject matter of any one species would necessarily encompass the search and examination of the remaining species. The application can thus be searched and examined without serious burden. MPEP § 803 sets forth the criteria for a proper requirement for restriction: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner. As also stated in MPEP § 803, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it

includes claims to independent or distinct inventions." (Emphasis added.) As discussed above, MPEP § 802.02 defines restriction as both restriction between distinct inventions and election of species requirements, it is clear that the requirement of a serious burden equally applies to election of species requirements. Furthermore, it is respectfully submitted that the requirement should be withdrawn in order to avoid duplicative examination by the Patent Office and unnecessary expense to Applicants.

Therefore, reconsideration and withdrawal of the Election of Species Requirement are respectfully requested.

Respectfully submitted,

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